AO 91 (Rev. 11/11) Criminal Complaint

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UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States Courts
Southern District of Texas
FILED
FEB 9 2015
David J. Bradley, Clerk of Court

United States of America
v.
MARTEZ ALANDO GURLEY

Defendant(s)

Case No. H15-133 M

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May, 2013 through February 2015 in the county of Harris in the Southern District of Texas, the defendant(s) violated:

Code Section	*Offense Description*
Title 18 U.S.C. Section 2320	Trafficking in Counterfeit Goods
Title 21 U.S.C. Sections 331(a), and 333(a)(2)	The introduction and delivery for introduction into interstate commerce drugs that are adulterated or misbranded

This criminal complaint is based on these facts:

See attached affidavit

☑ Continued on the attached sheet.

[signature]
Complainant's signature

Christopher (Eric) Gann
Printed name and title

Sworn to before me and signed in my presence.

Date: 02/09/2015

[signature]
Judge's signature

City and state: Houston, Texas

Judge Stephen Wm. Smith
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Christopher (Eric) Gann, after being duly sworn, do hereby depose and state:

1. I have been a Special Agent with the Food and Drug Administration Office of Criminal Investigations (FDA-OCI) Houston Domicile Office since April 2014. During my tenure with FDA-OCI, I have investigated cases involving counterfeit and misbranded pharmaceuticals. Prior to my employment with FDA-OCI, I was a Special Agent with Homeland Security Investigations (HSI) for thirteen years. During my tenure with HSI, I primarily conducted long term investigations involving narcotics smuggling and money laundering. During my tenure with FDA-OCI and HSI, I have participated in the drafting and execution of numerous search and arrest warrants.

Persons to be arrested

2. I make this affidavit in support of a criminal complaint and arrest warrant for the following person: **Martez Alando Gurley.**

Probable Cause

3. The information enumerated in the paragraphs below, furnished in support of a criminal complaint for Martez Alando Gurley ("Gurley") is based upon information of my own personal knowledge, and observations and or facts related to me by other agents of HSI and or other law enforcement personnel involved in this investigation and representatives of the trademark holders Pfizer Inc. ("Pfizer") and Eli Lilly and Company ("Eli Lilly"). Because this affidavit is being submitted for the limited purpose of establishing probable cause for a criminal complaint and an arrest warrant, the affidavit may not contain every fact known to me during the course of this investigation.

4. The United States Food and Drug Administration ("FDA") is charged with protecting the health and safety of the American public by ensuring, among other things, that drugs sold for administration to humans bear labeling containing true and accurate information. The FDA's responsibilities include regulating the labeling and distributing of prescription drugs shipped or received in interstate commerce.

5. Under the Food, Drug and Cosmetic Act, the definition of a "drug" includes articles which (1) are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man, and (2) are intended to affect the structure or function of the body of man. Due to the toxicity and other potential harmful effects, certain drugs are not considered safe for use except under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs.

6. The Food, Drug and Cosmetic Act also regulates the importation, delivery,

distribution and receipt of prescription drugs in interstate commerce. Under the Act, a prescription drug is deemed misbranded if its labeling is false and misleading in any particular manner. Under the Act, a drug must bear labeling to provide information for its safe use. If a drug is dispensed without a prescription, it is also deemed to be misbranded under the Act.

7. Viagra is a prescription drug product that has been approved by the FDA for distribution within the United States. Pfizer has the exclusive right to manufacture Viagra for distribution within the United States. Pfizer owns several trademarks which are registered in the principal registry in the United States Patent and Trademark Office. Pfizer owns U.S. Trademark Registration Number 2,593,407 for the blue, diamond-shaped tablet, Registration Number 626,088 for the Pfizer design [ ], Registration Number 2,827,922 for the VGR mark, Registration Number 2,951,026 for the "PFIZER" word mark, and Registration Number 2,162,548 for the "VIAGRA" word mark.

8. Cialis is a prescription drug product that has been approved by the FDA for distribution within the United States. Eli Lilly has the exclusive right to manufacture Cialis for distribution within the United States. Lilly owns several trademarks which are registered in the principal registry in the United States Patent and Trademark Office. Lilly owns U.S. Trademark Registration Number 2,833,222 for the gold, ovoid-shaped tablet bearing a stylized letter "C", Registration Number 2,833,221 for the Cialis design [ ], Registration Number 2,724,589 for the "CIALIS" word mark, Registration Number 1,318,867 for the Lilly design [ ], and Registration Number 1,226,434 for the "LILLY" word mark.

9. Counterfeit prescription drugs such as Viagra and Cialis are a danger to the health and safety of the American public because they are not quality controlled, do not contain the proper active pharmaceutical ingredients, and may contain harmful fillers and substances.

10. Affiant has learned through investigation that Gurley is not a medical doctor, pharmacist, licensed wholesaler, or licensed distributor of pharmaceutical drugs.

11. Affiant has learned through investigation that Gurley is the owner of "International Enhancers," a business located in California. Gurley advertises his business on www.ec21.com as a supplier, distributor, and wholesaler, of sex pills and sexual enhancement products.

12. In May 2013, HSI agents received information from a credible source of information ("SOI") in Houston, Texas, that Gurley was trafficking and distributing counterfeit Viagra and Cialis. The SOI stated that Gurley was operating out of California and using telephone number 757-646-3490.

13. Affiant has learned through investigation that telephone number 757-646-3490 is subscribed to L.S., who is believed to be Gurley's spouse. During the investigation, a Special Agent

with FDA called telephone number 757-646-3490 and spoke with an individual who identified himself as Martez Gurley.

14. Between June 2013 and November 2014, a Special Agent with HSI acting in an undercover capacity ("UC") sent text messages to Gurley utilizing telephone number 757-646-3490, and e-mails utilizing e-mail address ie.llc@live.com that was provided by Gurley. Gurley's e-mails ended with his e-mail signature: Martez Gurley EL, Owner, INTERNATIONAL ENHANCERS, LLC, "We Supply Demand", 707-981-7273(office). The text messages and e-mails between the UC and Gurley discussed the sale of Viagra and Cialis. Gurley made numerous statements indicating he knew the Viagra and Cialis tablets he sold were counterfeit. The UC and Gurley did not discuss the need for a prescription prior to ordering or receiving Viagra and Cialis. The UC received at least five (5) mail parcels containing counterfeit Viagra and counterfeit Cialis in Houston, Texas, within the Southern District of Texas from Gurley. At no time did the UC send Gurley a prescription for Viagra and Cialis.

15. On July 29, 2013, via text message to telephone number 757-646-3490, the UC questioned Gurley about the quality of the Viagra and Cialis tablets he was delivering. Gurley responded to the text and stated "who cares what it looks like. The end user does not want to pay pharmacy prices so they have to give a little in presentation. Potency is the bottom line." On the same date, the UC and Gurley agreed to the sale of three (3) 30-count bottles of Viagra and two (2) 30-count bottles of Cialis for $300.00. At the end of the negotiations for the Viagra and Cialis, Gurley sent a text to the UC that stated "Just keep me and the police separated and you can get as many as you want. My guy is always looking for big buyers". The UC deposited $300.00 into a Wells Fargo bank account ending in #1587 as instructed by Gurley.

16. The Wells Fargo bank account ending in #1587 into which federal agents deposited payments for Viagra and Cialis is in the name of INTERNATIONAL ENHANCERS LLC and the sole owner and signer on the account is Alando M. Gurley with phone number 757-646-3490.

17. On August 5, 2013, a mail parcel, containing the Viagra and Cialis ordered by the UC, was received at an address in the Eastern District of Texas that was used by federal agents for the investigation. The return address on the mail parcel was INTERNATIONAL ENHANCERS, 2117 Falcon Ridge Drive, Petaluma, CA 94954. According to law enforcement records Gurley resided at 2117 Falcon Ridge Drive, Petaluma, CA 94954, the return address on the parcel of Viagra and Cialis, from approximately mid-2013 to late-2014.

18. On December 8, 2013, via text message to telephone number 757-646-3490, the UC and Gurley agreed to the sale of forty-five (45) 30-count bottles of Viagra, forty (40) 30-count bottles of Cialis and fourteen (14) bottles of another product for $4,000.00. Gurley sent a text that advised the UC that he had plenty of Viagra and Cialis in stock and could have the order "in the mail within the hour of deposit." The $4,000.00 was deposited into the Wells Fargo bank account ending in #1587 as instructed by Gurley. On December 10, 2013, Gurley sent a text message to the UC to, "Be sure to compare the quality from the new batch as well," meaning Gurley received a new shipment of

Viagra and wanted the UC to compare (for quality) the new "batch" of Viagra with the old batch received in prior orders. On December 16, 2013, the UC received a mail parcel containing the ordered Viagra and Cialis at a Post Office Box, in Spring, Texas in the Southern District of Texas. The return address on the mail parcel was INTERNATIONAL ENHANCERS, 2117 Falcon Ridge Drive, Petaluma, CA 94954. The mail parcel and its content were turned over to the Customs and Border Protection Laboratory for fingerprint analysis and it was determined that one of Gurley's fingerprints was identified on the mail parcel.

19. On April 24, 2014, at approximately 9:45 a.m.(PST), an FDA Special Agent conducted a drive-by of Gurley's residence located at 2117 Falcon Ridge Drive, Petaluma, CA and observed a maroon GMC Yukon, displaying a "Manly" dealership paper tag, parked in the driveway of the residence. At approximately 10:00 a.m., Special Agents and Postal Inspectors initiated surveillance at the US Post Office located at 1150 North McDowell Blvd., Petaluma, CA. Investigative agents knew that Gurley had utilized this post office on previous occasions to mail counterfeit Viagra and Cialis to the UC. At approximately 10:16 a.m. (CST), the UC sent a text message to Gurley, utilizing telephone number 757-646-3490. The UC wrote, "Martez, I need to place that order for 25 bottles of V," Gurley replied, "Cool. Need any CA" and the UC replied, "Today I just need the 25 bottles of V...can you get it mailed out to me today. I need it ASAP." The UC then deposited $1,000.00 into the Wells Fargo bank account ending in #1587 as instructed. The UC sent the following text message to Gurley at telephone number 757-646-3490, "Just deposited the money. If you could mail it out ASAP I need it by Saturday." Gurley responded, "Yes sir." At approximately 11:10 a.m.(PST), Special Agents observed Gurley arrive at the US Post Office located at 1150 North McDowell Blvd., Petaluma, CA. driving the maroon GMC Yukon. Special Agents observed Gurley retrieve a white box from the vehicle and enter the US Post Office and transfer the box to the US postal mail clerk behind the counter. On April 28, 2014, the UC received a mail parcel containing the ordered Viagra tablets. The return address on the mail parcel was INTERNATIONAL ENHANCERS, 2117 Falcon Ridge Drive, Petaluma, CA 94954.

20. On June 30, 2014, via text message to telephone number 757-646-3490, the UC and Gurley agreed to the sale of thirty (30) 30-count bottles of Cialis for $1,000.00. The UC deposited $1,000.00 into Bank of America bank account ending in 0190 as instructed by Gurley. Gurley later informed the UC that he was out of Cialis and would have to provide the order at a later date. On July 14, 2014, the UC received an international mail parcel from Hong Kong containing forty (40) 30-count bottles of Cialis, described as "Health Care Products" with a total value of $20.00. Gurley told the UC to pay for the extra 10 bottles on a future order.

21. The Bank of America bank account ending in #0190 is in the name INTERNATIONAL ENHANCERS LLC and the sole owner and signer on the account is Martez A Gurley.

22. On October 22, 2014, via text message to telephone number 757-646-3490, the UC and Gurley agreed to the sale of four and one-half (4 ½) 30-count bottles of Viagra for $500.00, including $350.00 owed for the delivery of ten (10) extra 30-count bottles of Cialis received on July

14, 2014. The UC deposited $500.00 into the Wells Fargo bank account ending in #1587 as instructed by Gurley. On November 21, 2014, the UC received a mail parcel containing the ordered Viagra tablets. The return address on the mail parcel was 2117 Falcon Ridge Drive, Petaluma, CA 94954.

23. Federal agents sent samples of the aforementioned Viagra and Cialis tablets purchased from Gurley to the trademark owners Pfizer and Eli Lilly for analysis. The tablets were all confirmed to be counterfeit and misbranded.

24. On February 4, 2015, a federal agent working on the investigation sent a text message to Gurley via telephone number 757-646-3490 asking Gurley whether he had five (5) bottles of Viagra. Gurley responded to the text with the message, "by tomorrow."

25. On February 5, 2014, a federal agent from HSI reviewed Gurley's website International Enhancers LLC (International Enhancers.com), and noted that the website was still active and displayed a contact telephone number for Gurley as 757-646-3490.

26. Based on my experience and the aforementioned facts and observations, I respectfully submit that there is probable cause to believe that Martez Alando Gurley did intentionally and knowingly traffic in goods or services and use a counterfeit mark on or in connection with such goods or services, and traffic in labels, stickers, badges, emblems, documentation or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive, in violation of Title 18, United States Code, Section(s) 2320(a)(1) and 2320(a)(2). Furthermore, there is probable cause to believe that Martez Alando Gurley did intentionally and knowingly introduce misbranded drugs into interstate commerce in violation of Title 21, United States Code, Section(s) 331(a) and 333(a)(2).

Christopher (Eric) Gann
Special Agent
Food and Drug Administration OCI

Sworn to and subscribed before me this 9th day of February 2015, at Houston, Texas and I find probable cause.

STEPHEN WM. SMITH
United States Magistrate Judge